Lot 582, s. 6 Bandar Bukit Mertajam, (the disputed property) forming part of the estate of the deceased abovenamed to the applicant, the widow and sole relict of the said deceased, on payment of the sum of RM2,500 to the respondent as creditor of the said deceased and for such orders and reliefs as the Court may deem fit and expedient.

Having regard to my finding that the applicant is the lawful widow and relict of the deceased, and upon the evidence before me, she being the sole next of kin of the deceased, the applicant is entitled to succeed to the whole of the estate of the deceased by virtue of the Distribution Act 1960, and therefore she is solely entitled to the ownership of the disputed property, and I so declare. The respondent must therefore sign a memorandum of transfer in due form transferring the disputed property to the applicant as soon as possible and, in any case, not later than two weeks from date hereof, failing which the Senior Assistant Registrar of this Court be and is hereby authorised to do so on behalf of the respondent and/or on behalf of the estate of the deceased. I further order that upon presentation of the duly executed memorandum of transfer accompanied by the issue document of title to the disputed property, the proper registering authority be and is hereby required to forthwith register the same in the name of the applicant. The respondent must, of course, also forthwith surrender all old title deeds relating to the disputed property to the applicant to enable her to apply for an Advanced Certificate of Title.

I give liberty to the applicant, but only after the transfer of the disputed property has been registered in her favour, to apply for the grant of Letters of Administration to the estate of the deceased, whereupon the grant of Letters of Administration in favour of the respondent must be revoked, and the same granted to her, instead, she being the lawful widow and relict of the deceased.

I would have gone on to say that any claims the respondent may have against the estate of the deceased would have to be litigated according to law but I am now informed that the parties have arrived at a compromise regarding this.

By consent, parties to bear their own costs.

JAMES CAPEL (FAR EAST) LTD.

v.

Y K FUNG SECURITIES SDN. BHD. AND TAN KOON SWAN (THIRD PARTY)

HIGH COURT, IPOH
DATO' PEH SWEE CHIN SCJ
[KOD 23-202-86]
27 AUGUST 1992

PRACTICE AND PROCEDURE: Application for leave to amend pleadings - Application made by defendant in the middle of the trial after the plaintiff had closed its case - Whether amendment necessary - Principles applicable.

The plaintiff sued the defendant, a company of share-brokers in Ipoh for the balance of the price of shares and stocks sold to the defendant and for damages, interests and costs. The defendant pleaded illegality of the contracts for the sale and purchase of shares.

The defendant made an application for amendment of its pleadings, its fourth application for amendment, in the course of the trial and after the plaintiff had closed its case. The purpose of the proposed amendment was to plead s. 34 of Singapore's Securities Act 1973 which provided for recission of the contract within seven days of receipt of the contract note.

The contract notes were all issued on various dates in 1985 and the defendant purported to rescind the same by notice of recission dated 7 June 1991.

Held:

[1] The notices of recission were issued after the expiry of the seven days as provided pursuant to s. 34(3) Singapore's Securities Industry Act 1973 and were given completely out of time.

[2] The application at that stage of the proceedings was grossly unfair to the plaintiff whose witnesses were all overseas to have them recalled when the amendment would have been apparent years ago if it was found tenable.

[Application dismissed with costs].

Cases referred to:

Yamaha Motor Co. Ltd. v. Yamaha Malaysia Sdn. Bhd. [1983] 1 CLJ 191/[1983] 1 MLJ 213 (***refd***)

Jeyaratnam Joshua Benjamin v. Lee Kuan Yew [1990] 2 MLJ 65 (***foll***)

Legislation referred to:
Singapore's Securities Industry Act 1973, ss. 34, 34(3)
Singapore's Securities Industry Regulations 1973, Regulation 19

For the plaintiff - N. Chandran; M/s. Adnan Sundra & Low
For the defendant - Chan Kok Keong; M/s. Chan & Associates

JUDGMENT

Peh Swee Chin SCJ:
There is an appeal pending against an order of my first refusal of the fourth application for amendment of pleadings by the defendant in the same case when it was, this time made in the middle of the trial and after the case of the plaintiff had closed, when the same case was about to resume in a few days time, after an earlier adjournment for lack of time.

Bearing these factors in mind, I looked at the proposed amendment. Before I set it out below, a few words about the nature of the claim would not be out of place.

The plaintiff sued the defendant, a company of share-brokers in Ipoh for Singapore $24,711,985.56, being the balance of the price of shares and stocks sold to the defendant; and also damages, interests and costs. The defendant has pleaded illegality or unlawfulness of contracts of the sale and purchase of shares by a plethora of grounds, if I may say so, of market rigging; lack of approval of Foreign Investment Committee, artificial contracts, because ultimate buyer and seller were same, that is, one Tan Koon Swan who was widely reported to be involved in a stock market collapse in Singapore. The defendant brought in the said Tan Koon Swan as the third party by third party procedure.

The proposed amendment is set out below in the original forms of new paragraphs or insertions of few words in some other pre-existing paragraphs:

> 12A. Further and/or alternatively the plaintiffs were at all material times a dealer within the meaning of the Securities Industry Act 1973 and failed to inform the defendants that they were acting in the said contracts as principal and not as agent. By notices of recission dated 7 June 1991 pursuant to s. 34(3) of the Act the defendants rescinded the said contracts. In the premises, the defendants are not in breach of either of the said contracts and/or the plaintiffs are not entitled to any sums pursuant to or as damages for breach of the said contracts or either of them.
>
> 12B. Further and/or alternatively, the plaintiffs are not entitled to any damages because the plaintiffs are not entitled to damages to put them into a position in which they would have been had there been no breach by the defendants and it was always and is open to the defendants to rescind the said contracts pursuant to s. 34 of the Securities Industry Act 1973.
>
> 13A. ... Alternatively, the proper law governing the alleged contracts is partly the law of Singapore and partly the law of Malaysia as the plaintiffs were dealers in securities in Singapore, the defendants were dealers in securities in Malaysia and both parties contracted with each other as such. Section 34 of the Securities Act 1973 and/or Regulation 19 of the Securities Industry Regulations 1974 apply to the contracts as the plaintiffs were dealers in securities in Singapore, and/or had to perform the alleged contracts as such and in accordance with the law of Singapore since that was the place of performance and/or that section and/or that Regulation are implied into the alleged contracts.
>
> 15. ... and/or as monies had and received the consideration for the payment of which has totally failed.

The purpose of the proposed amendment must have been to plead s. 34 of Singapore's Securities Industry Act 1973.

For ease of reference s. 34 of the said Singapore's Act is set out below:

> Section 34 -
>
> (1) A dealer shall not, as principal, deal in any securities with a person who is not the holder of a dealer's licence unless he first informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent.
>
> (2) For the purposes of subsection (1) dealings as principal include dealings on behalf of a corporation in which the dealer or its directors have a controlling interest.
>
> (3) Where a dealer has failed to comply with subsection (1) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of recission, in writing, given to the dealer within seven days after the receipt of the contract note and, where a dealer has failed to comply with that subsection in respect of a contract for the purchase of securities by him, the

vendor of the securities may, in the like manner, rescind the contract.

Regulation 19 of Singapore's Securities Industry Regulations 1973, sets out *inter alia*, the contents of a contract note of stock broker in eleven items, including *inter alia* a statement that a broker is dealing as principal if he deals as such.

The said s. 34 and the Regulation 19 set out above purportedly gave a right to a purchaser in whose shoes the defendant was, at the time of the receipt of a contract note "Within Seven Days After The Receipt Of The Contract Note" to rescind the contract at the option of the purchaser, apparently.

The contract notes in question were all issued on various dates in the year 1985. The defendant said by its para 12A, that it sent its "Notice of Recission dated 7 June 1991, pursuant to s. 34(3) of the Act ...", that is, the Singapore's Securities Industry Act 1973. The seven days must have long expired.

Before any Court began to consider the applicability or otherwise e.g. of the three conditions in regard to an application for amendment as set out in the oft-quoted *Yamaha Motor Co. Ltd. v. Yamaha Malaysia Sdn. Bhd.* [1983] 1 MLJ 213 about *bona fides*, etc., I was struck by the uselessness of the proposed amendment.

As regards to the uselessness, the Court adopted the test to it as if the Court were faced with an application to strike out the proposed amendment on the ground of its disclosing no reasonable cause of action, please see *Jeyaratnam Joshua Benjamin v. Lee Kuan Yew* [1990] 2 MLJ 65. In adopting this test, the Court was of the view that it should not be allowed, because of the notice of rescission in question being given completely out of time.

Assuming the point had merit, I would have in any event refused it; exercising my discretion, coming as the application did at that stage of proceedings in the middle of trial, it would be grossly unfair to the plaintiff whose witnesses were all overseas to have them recalled when the amendment would have been apparent years ago if it was found tenable.

I could not also countenance the cavalier fashion of the repeated amendments when the Court felt enough was enough, as regards them, and this was also taken into consideration.

I therefore dismissed the application with costs.

NG KEAN TUCK & 3 ORS.

v.

KOH SIM LING & 2 ORS.

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[CIVIL SUIT NO. 22-317-92]
31 OCTOBER 1992

INJUNCTION: Application for interlocutory injunction to abate trespass by encroachment of property - Assertion of trespass unrebutted - Whether plaintiffs entitled to the injunction.

The plaintiffs and the defendants are the owners of land in Selayang sharing a common boundary. The defendants pursuant to the approval of the Yang di Pertua Majlis Daerah Gombak, put up a single storey dwelling house on their land.

The plaintiffs subsequently caused a survey to be done on their land and discovered that the defendants had trespassed into their land. The plaintiffs applied for an interim injunction to abate the defendants' trespass by encroachment of the plaintiffs' property.

The defendants' contended that because the District Office passed their plans, it must be inferred that their building must be within their own boundary.

Held:

[1] The survey plan clearly showed that the defendants had trespassed into the plaintiffs' land. The recent photographs taken of the properties show that the defendants' original house authorised by the Yang di Pertua Daerah Gombak has little resemblance to the building now standing on the property. The house has been extended by another concrete structure along a substantial portion of the common boundary.

[2] The plaintiffs assertion of trespass is unrebutted and therefore proven to the hilt.

[Plaintiffs application allowed with costs].

For the plaintiffs - L.C. Loh; M/s. L.C. Loh & Co.
For the defendants - Francis Goh; M/s. Chin & Rakan-Rakan

JUDGMENT

Mahadev Shankar J:

This is the plaintiffs' interlocutory application for an injunction to abate the defendants' trespass by encroachment of the plaintiff's property.